

Dated: July 24, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

Statutory Authority: Section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).

It is proposed that part 180, Subpart c, § 180.298 be revised in its entirety by editorially revising the section into an alphabetized columnar listing and by alphabetically inserting the tolerance of 0.5 ppm on safflower seed, as follows:

§ 180.298 Methidathion; tolerances for residues.

Tolerances are established for residues of the insecticide methidathion (0,0-dimethyl phosphorodithioate, S-ester with 4-(mercaptomethyl)-2-methoxy-Δ²,1,3,4-thiadiazolin-5-one) in or on the following raw agricultural commodities:

Commodity:	Parts per million
Alfalfa.....	6
Alfalfa, hay.....	6
Clover.....	6
Clover, hay.....	6
Cottonseed.....	2
Grapefruit.....	2
Grass.....	6
Grass, hay.....	6
Lemons.....	2
Oranges.....	2
Peaches.....	.05
Pecans.....	.05
Potatoes.....	.2
Safflower seed.....	.5
Sorghum, fodder.....	2
Sorghum, forage.....	2
Sorghum, grain.....	.2
Sunflower seeds.....	.5
Walnuts.....	.05

[FR Doc. 78-21015 Filed 7-28-78; 8:45 am]

[6560.01]

[40 CFR Part 180]

[PP 7E1881/P81; FRL 934-41]

PROPOSED TOLERANCE FOR THE PESTICIDE
CHEMICAL MALATHION

Tolerances and Exemptions From Tolerances
for Pesticide Chemicals in or on Raw Agricultural Commodities

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that the insecticide malathion be used on wild rice. The proposal was submitted by the Interregional Research Project No. 4. This amendment to the regulations would establish a maximum permissible level for residues of malathion on wild rice.

DATE: Comments must be received by August 30, 1978.

ADDRESS: Comments to Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mrs. Patricia Critchlow, Registration Division (WH-567), Office of Pesticide Programs, EPA, 202-755-2516.

SUPPLEMENTARY INFORMATION: Dr. C.C. Compton, Coordinator, Interregional Research Project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Minnesota has submitted a pesticide petition (PP 7E1881) to the EPA. This petition request that the Administrator propose that 40 CFR 180.111 be amended by the establishment of a tolerance for residues of the insecticide malathion (0,0-dimethyl dithiophosphate of diethyl mercaptosuccinate) in or on the raw agricultural commodity wild rice at 8 parts per million (ppm).

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the proposed tolerance included two 2-year rat feeding studies, one with a no-observable-effect level (NOEL) of 100 ppm, the other showing cholinesterase-inhibition at 100 ppm but no systemic effects at 1,000 ppm; a one-generation rat reproduction study in which reproductive effects were observed at 4,000 ppm, the only level tested; a negative neurotoxicity study; a negative single dose (900 milligrams (mg)/kilogram (kg) of body weight (bw)) intraperitoneal teratology study in rats; rat and mouse oral lethal dose (LD₅₀) tests; two negative mutagenicity tests using microbial assay systems; and a 47-day human feeding study with an NOEL at 0.2 mg/kg bw/day. Based on this last study and using a safety factor of 10, the acceptable daily intake (ADI) is 0.02 mg/kg bw/day. The maximum permissible intake for a 60-kg man is 1.2 mg/day.

Tolerances have previously been established for residues of malathion on a variety of raw agricultural commodities at levels ranging from 135 ppm to 0.1 ppm. Food additive tolerances have also been established for malathion residues on raisins at 12 ppm and in safflower oil at 0.6 ppm. Feed additive tolerances have been established for malathion residues in dehydrated citrus pulp at 50 ppm and in nonmedicated cattle feed concentrate blocks at 10 ppm.

On a theoretical basis, the total maximal residue contribution (TMRC)

of these tolerances exceeds the ADI; however, total diet surveys show that over a 4-year period the actual exposure to malathion was not more than 0.00013 mg/kg bw/day, which is less than 1 percent of the ADI. The increment of human exposure due to the tolerance on wild rice would be negligible, and thus, the increment in risk, if any, is acceptable. The metabolism of malathion is adequately understood, and an adequate analytical method (gas chromatography using a flame photometric detector) is available for enforcement purposes. The following studies are currently lacking: oncogenicity studies in two mammalian species using currently acceptable protocols, a multigeneration reproduction study, and a teratology (oral) study. However, it has been determined that the proposed tolerance can be established because: (1) Tolerances currently exist for malathion on a majority of food and feed items in the United States and (2) the use of malathion on wild rice would not significantly increase human exposure to malathion residues. There is no reasonable expectation of residues in eggs, meat, milk, or poultry as delineated in 40 CFR 180.6(a)(3).

The pesticide is considered useful for the purpose for which a tolerance is sought, and it is concluded that the tolerance of 8 ppm established by amending 40 CFR 180.111 will protect the public health. It is proposed, therefore, that the tolerance be established as set forth below.

Any person who has registered, or submitted an application for the registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act which contains any of the ingredients listed herein may request, within 30 days after publication of this proposal in the FEDERAL REGISTER, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number, "PP7E1881/P81." All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the Office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

STATUTORY AUTHORITY: Section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)).

Dated: July 24, 1978.

DOUGLAS D. CAMPT,
Acting Director
Registration Division.

It is proposed that part 180, subpart C, § 180.111 be amended by alphabetically inserting the tolerance of 8 ppm on wild rice in the table to read as follows:

Section 180.111 Malathion; tolerances for residues.

Commodity:	Parts per million
Rice, wild	8

[FR Doc. 78-21016 Filed 7-28-78; 8:45 am]

[4110-84]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 23]

NATIONAL HEALTH SERVICE CORPS

Subpart A—Assignment of National Health Service Corps Personnel

AGENCY: Public Health Service, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations prescribe the requirements for the assignment of National Health Service Corps personnel under Section 333 of the Public Health Service Act (42 U.S.C. 254f) to public or nonprofit private entities to provide health services in or to a health manpower shortage area designated under Section 332 of the Public Health Service Act.

DATE: Comments must be received August 30, 1978.

ADDRESSES: Written comments, preferably in triplicate, should be addressed to the Director, Division of Policy Development, Bureau of Community Health Services, Health Services Administration, room 6-17, 5600 Fishers Lane, Rockville, Md. 20857. All comments received will be available for public inspection and copying at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Fitzhugh S. M. Mullan, M.D., Director, National Health Service Corps, Bureau of Community Health Ser-

vices, Room 6-05, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4434.

SUPPLEMENTARY INFORMATION: On October 12, 1976, a new section 333 was added to the Public Health Service Act (42 U.S.C. 254f) by Pub. L. 94-484, the Health Professions Educational Assistance Act of 1976. This section allows the Secretary to assign, pursuant to regulations, members of the National Health Service Corps to public and nonprofit entities to provide health services in or to a health manpower shortage area.

Based upon the enactment of this new section 333, the Assistant Secretary for Health, Department of Health, Education, and Welfare, proposes to revoke the existing part 23, subpart A, and add a new Subpart A entitled "Assignment of National Health Service Corps Personnel."

A notice of intent to issue regulations for this program was published in the FEDERAL REGISTER on May 20, 1977 (42 FR 25992). Interested persons were invited to comment on the issues raised and several comments were received.

The regulations establish the conditions applicable to the assignment of National Health Service Corps personnel to a public or nonprofit private entity to provide health services in or to a health manpower shortage area. In the interest of streamlining regulations and reducing regulatory burden, minute program particulars have not been set forth in the regulations. For this reason, most of the comments received on the notice of intent were not pertinent to the development of these regulations, but will be considered by the Department in developing program policies.

Following is a brief summary of the major features of the proposed regulations:

(1) In approving applications for assignment, section 23.5(b) provides that if two eligible entities, one located in the health shortage area and one not located in the area but having a demonstrated interest in it, submit applications for assignment of National Health Service Corps personnel to provide health services to the area, special consideration will be given to the entity located in such health manpower shortage area. This special consideration was adopted in response to the several public comments received suggesting that such a consideration would promote greater community involvement between the approved entity and the individuals receiving health services.

(2) Section 333(c) of the Public Health Service Act requires that the Secretary take into consideration four factors in assigning National Health Service Corps personnel to entities

with approved applications. The four factors are (i) Need of the health manpower shortage area, (ii) Use of physician assistants, nurse practitioners, or expanded function dental auxiliaries, (iii) Willingness of the individuals within the health manpower shortage area to assist and cooperate with the National Health Service Corps and (iv) Comments of professional societies serving the health manpower shortage area. In implementing this statutory requirement, the regulations provide that the Secretary will utilize a weighted-value system in which weights will be assigned to the four statutory factors, with the greatest weight being assigned to the first factor listed above and weights being assigned to the remaining factors in descending order. Based on this approach, approved applications will be assigned to priority categories. Personnel assignments will then be made to entities in accordance with these priority categories to the extent possible consistent with the statutory mandate that in assigning personnel to provide health services to a health manpower shortage area, the Secretary shall seek to assign to an area personnel with those characteristics which will increase the probability of their remaining to serve the area upon completion of the assignment period.

(3) The proposed regulations require that individuals receiving services from assigned National Health Service Corps personnel be charged on a fee-for-service or other basis at a rate to be approved by the Secretary. Fees are to be based upon the cost of delivering services and on fees charged for similar services by similarly situated practitioners and facilities. The proposed regulations further provide that no individual will be denied health services based upon his inability to pay for such services. With respect to this inability to pay, § 23.9 of the proposed regulations states that those individuals with annual incomes at or below the "CSA Income Poverty Guidelines" (45 CFR 1060.2) may receive services at a reduced charge. Individuals who have annual incomes above the "CSA Income Poverty Guidelines" but which do not exceed 200 percent of such CSA levels will also receive health services at reduced charge. Charges will be made, however, for services to individuals to the extent that payment will be made by a third party which is authorized or under legal obligation to pay such charges.

(4) The statute requires in section 334(a)(3) that the National Health Service Corps site repay the Federal Government for the costs involved in providing assigned National Health Service Corps personnel. The statute also provides that repayment may, under certain specific circumstances,

be waived in whole or in part. Section 23.10 of the regulations sets forth the criteria to be used in determining whether to grant a waiver of the repayment requirement.

All relevant material received on or before August 30, 1978 will be considered before adoption of final regulations.

It is proposed to add a new Subpart A to read as set forth below.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: February 10, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: July 18, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Subpart A—Assignment of National Health Service Corps Personnel

Sec.

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AUTHORITY: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 333 of the Public Health Service Act, 90 Stat. 2272 (42 U.S.C. 254f).

Subpart A—Assignment of National Health Service Corps Personnel

§ 23.1 Applicability.

The regulations of this subpart are applicable to the assignment of National Health Service Corps personnel under section 333 of the Public Health Service Act (42 U.S.C. 254f) to provide health services in or to health manpower shortage areas as designated under section 332 of the Public Health Service Act (42 U.S.C. 254e).

§ 23.2 Definitions.

As used in this subpart:

- (a) "Act" means the Public Health Service Act, as amended.
- (b) "Assigned National Health Service Corps personnel" or "Corps personnel" means health personnel of the Regular and Reserve Corps of the Public Health Service Commissioned Corps and such civilian personnel as the Secretary designates, including, but not limited to, physicians, dentists, nurses, and other health professions personnel who are assigned in accordance with section 333 of the act and the regulations in this subpart.

ance with section 333 of the act and the regulations in this subpart.

(c) "Health manpower shortage area" means a geographic area, population group, a public or nonprofit private medical facility or other public facility which the Secretary determines has a shortage of health manpower in accordance with section 332 of the act and implementing regulations.

(d) "National Health Service Corps site" means the entity to which personnel has been assigned under section 333 of the act and this subpart to provide health services in or to a health manpower shortage area.

(e) "Nonprofit private entity" means an entity no part of the net earnings of which inure or may lawfully inure to the benefit of any private shareholder or individual.

(f) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of that Department to whom the authority involved has been delegated.

§ 23.3 Eligibility.

Any public or nonprofit private entity which is located in a health manpower shortage area, or has a demonstrated interest in such area, may apply for the assignment of National Health Service Corps personnel under this subpart.

§ 23.4 Application.

(a) An application for the assignment of National Health Service Corps personnel under this subpart must be submitted to the Secretary by an eligible applicant in such form and at such time as the Secretary may prescribe.¹ The application must be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by law, the act, the regulations of this subpart, and any additional conditions of assignment imposed pursuant thereto.

(b) In addition to such other pertinent information as the Secretary may require, an application for the assignment of Corps personnel filed under this subpart must include a description of the applicant's overall organizational structure, a justification of the request for the assignment of personnel based upon the needs of the health manpower shortage area, and a description of the applicant's financial plan for operating the National Health Service Corps site, including a proposed budget; sources of non-Federal support sought or obtained; the proposed expenditures for obtaining adequate support staff, equipment and

¹ Applications and instructions may be obtained from Regional Offices of the Department of Health, Education, and Welfare at the addresses set forth at 45 CFR 5.31(b).

supplies; and a list of the proposed fees and discounted fees to be charged for the provision of health services.

(c) An application for assignment filed under this subpart must also include evidence that the applicant has provided a copy of such application for review to (1) each health systems agency designated under section 1515 of the act for the health service area which includes all or part of the health manpower shortage area to receive assigned National Health Service Corps personnel, or (2) if no health systems agency has been designated for such a health service area, to each State health planning and development agency designated under section 1521 for each State which includes all or part of the health manpower shortage area to receive assigned National Health Service Corps personnel.

(d) If an application for assignment under this subpart is filed by an applicant which had previously been assigned National Health Service Corps personnel under an agreement entered into under section 329 of the act as in effect before October 1, 1977, or under section 334 of the act, the applicant must provide the information the Secretary deems necessary to making determinations required by section 333(a)(1)(D) of the act.

§ 23.5 Evaluation of applications.

(a) In approving or disapproving an application for assignment of Corps personnel, the Secretary will take into consideration among other pertinent factors:

- (1) The degree to which the applicant adequately provides for meeting the requirements in § 23.8.
- (2) The administrative and managerial capability of the applicant.
- (3) The soundness of the applicant's financial plan for operating the National Health Service Corps site.
- (4) The extent to which community resources will be utilized in operating the National Health Service Corps site.
- (5) Comments received from any designated health systems agency or any designated State health planning and development agency to which an application was submitted for review under § 23.4(c).
- (6) Comments received from professional societies serving the health manpower shortage area.

(b) If two entities, one located in the health manpower shortage area and one not located in the area but having a demonstrated interest in it, submit applications for assignment of Corps personnel to provide health services to the area, special consideration will be given to the entity which is located in such health manpower shortage area.

§ 23.6 Assignment of National Health Service Corps personnel.

(a) The Secretary may, upon approving an application for the assignment of personnel and after entering into an agreement with an applicant under § 23.7, assign National Health Service Corps personnel to provide health services in or to a health manpower shortage area.

(b) In determining where to assign Corps personnel, the Secretary will apply a weighted-value system in accordance with section 333(c) of the act in which weight is assigned to the following factors in the order listed below; *Provided*, That in making the assignment of National Health Service Corps personnel to serve in a health manpower shortage area, the Secretary shall seek to assign such personnel to serve in the area who have those characteristics which will increase the probability of their remaining to serve in the health manpower shortage area upon completion of the period of assignment:

(1) Need of the health manpower shortage area as determined by criteria established under section 332(b) of the act;

(2) Indication in the application of using physician assistants, nurse practitioners, or expanded function dental auxiliaries;

(3) Willingness of individuals, government agencies, or health entities within the health manpower shortage area to cooperate with the National Health Service Corps in providing effective health services; and

(4) Comments of professional societies serving the health manpower shortage area.

§ 23.7 Agreement.

(a) *Requirements.* Each National Health Service Corps site must enter into an agreement with the Secretary under which the site will agree to (1) be responsible for charging for the health services provided by assigned National Health Service Corps personnel in accordance with section 334(d) of the act; (2) take such action as may be reasonable for the collection of charges for such health services in accordance with section 334(a)(2) of the act; (3) reimburse the United States such sums as may be required under section 334(a)(3) of the act; and (4) prepare and submit an annual report.

In addition, such agreement will set forth the period of assignment (not to exceed 4 years), the number and type of Corps personnel to be assigned to the site, and such other requirements as the Secretary determines necessary to carry out the purposes of section 334.

(b) *Termination.* An agreement entered into under this section may be terminated by either party on 30-days

written notice or modified by mutual consent consistent with the requirements of section 334 of the act.

§ 23.8 Operational requirements.

Each National Health Service Corps site must:

(1) Operate a health care delivery system with an integrated organizational structure to assure (i) the provision of high quality comprehensive health care, (ii) adequate professional health care coverage for the health manpower shortage area, (iii) continuum of care, and (iv) the availability and accessibility of secondary and tertiary health care;

(2) Establish and maintain a patient record system;

(3) Implement a system for maintaining the confidentiality of patient records in accordance with the confidentiality provisions set forth in 42 CFR 56.111;

(4) Meet the requirements of applicable fire and safety codes;

(5) Develop, to the extent possible, linkages with other health care facilities for the provision of services which supplement or complement the services furnished by the assigned Corps personnel;

(6) Operate a quality assurance system in accordance with the provisions of 42 CFR 51c.303(c); and

(7) Establish basic data, cost accounting, and management information and reporting systems which will enable the applicant to provide statistical and other information concerning the assignment and the health manpower shortage area as the Secretary may require.

§ 23.9 Charges for services.

(a) Except as otherwise provided in paragraph (b) of this section, individuals receiving services from assigned National Health Service Corps personnel will be charged on a fee-for-service or other basis at a rate to be approved by the Secretary and computed to permit the recovery of the value of the services provided. In approving the fees to be charged for health services, the Secretary will consider the costs to the National Health Service Corps of providing the health services; the costs to the health manpower shortage area for providing the services; and the charges for similar services by other practitioners or facilities in or nearby the health manpower shortage area. However, if assigned National Health Service Corps personnel is providing service within the framework of an established health services delivery system, the Secretary may approve fees to be charged for the provision of the service consistent with charges made by such system.

(b) No charge or a reduced charge will be made for health services pro-

vided by assigned National Health Service Corps personnel to individuals within the health manpower shortage area with annual incomes at or below the "CSA Income Poverty Guidelines" (45 CFR 1060.2); *Provided*, That no individual will be denied health services based upon inability to pay for such services. Any individual who has an annual income above the "CSA Income Poverty Guidelines," but whose income does not exceed 200 percent of such CSA levels, will receive health services at reduced charges. However, charges will be made for services to such persons to the extent that payment will be made by a third party which is authorized or under legal obligation to pay such charges.

§ 23.10 Waiver.

(a) The Secretary may waive in whole or in part the reimbursement requirements of section 334 of the act where he determines that:

(1) The National Health Service Corps site is financially unable to meet such reimbursement requirements or that compliance with such requirements would unreasonably limit the ability of the site to adequately support the provision of services by assigned Corps personnel. In determining whether a National Health Service Corps site is financially unable to meet the reimbursement requirements or that such requirements would unreasonably limit the ability of a site to provide adequate services, the Secretary will consider (i) the costs necessary to maintain the adequate support of health services provided by assigned National Health Service Corps personnel, and the income and financial resources available to meet such costs; (ii) the ability of the applicant to obtain credit from suppliers, lending institutions, private organizations and individuals; and (iii) the need of the health manpower shortage area for health services, and the utilization by the National Health Service Corps site of health professions personnel.

(2) A significant percentage of the individuals who are located in the health manpower shortage area and are receiving the health services of the assigned National Health Service Corps personnel are elderly, living in poverty, or have other characteristics which indicate an inability to pay. For purposes of this section, "elderly" is defined as persons 65 years or older and the "CSA Income Poverty Guidelines" will be used as the standard for determining whether individuals are living in poverty. Other characteristics indicating inability to pay will include, but not be limited to, the ratio of unemployment in the health manpower shortage area and the area's cost-of-living.

(b) Requests for waiver under this subpart must be made at such time and in such manner and contain such documentation as the Secretary may require.

§ 23.11 Sale of equipment.

(a) The Secretary may upon expiration of the assignment of all Corps personnel to a health manpower shortage area, sell equipment and other property of the United States utilized by such personnel to an appropriate local entity at the fair market value, or at less than fair market value if he determines that an entity is financially unable to pay the full market value. For purposes of this section, unable to pay the full market value. For purposes of this section, an "appropriate local entity" is any entity providing health services in or to a health manpower shortage area. In determining whether an entity is financially unable to purchase equipment or property at fair market value, the Secretary will consider (1) the present financial resources of the entity available to purchase such equipment or property based upon its current liabilities, and (2) the entity's ability to obtain the funds necessary to purchase the equipment or property. However, the Secretary will not sell equipment or property under this paragraph for less than fair market value to a profitmaking organization unless such organization provides reasonable assurance that it will use the equipment or property to provide health services in or to the health manpower shortage area.

(b) The Secretary will give priority in the sale to an entity which will provide reasonable assurance that it will use the equipment or property for the purpose of retaining previously assigned National Health Service Corps personnel within the health manpower shortage area.

§ 23.12 Supervision of assigned personnel.

Assigned National Health Service Corps personnel will at all times remain under the direct supervision and control of the Secretary. Observance of institutional rules and regulations by such assigned personnel are mere incidents of the performance of their Federal functions and do not alter their direct professional and administrative responsibility to the Secretary.

§ 23.13 Nondiscrimination.

(a) Attention is called to the requirements of title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d et seq.) and, in particular, section 601 of such act which provides that no person in the United States shall, on the grounds of race, color, creed, or national origin be excluded from participation in, be denied the

benefits of, or be subjected to discrimination under any program or actively receiving Federal financial assistance. A regulation implementing title VI has been issued by the Secretary with the approval of the President (45 CFR Part 80).

(b) Attention is called to the requirements of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which provides that no otherwise qualified handicapped individual in the United States shall, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing section 504 has been issued (45 CFR Part 84).

[FR Doc. 78-20506 Filed 7-28-78; 8:45 am]

[4110-87]

[42 CFR Parts 81, 83, and 84]

CERTIFICATION OF OCCUPATIONAL SAFETY AND HEALTH EQUIPMENT

Withdrawal of Notices of Proposed Rulemaking

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Center for Disease Control, PHS, HEW.

ACTION: Withdrawal of notices of proposed rulemaking.

SUMMARY: HEW withdraws notices of proposed rulemaking relating to voluntary testing and certification programs for personal noise dosimeter sets, industrial head protective devices, and gas detector tube units. The programs will be established or continued under agency guidelines.

EFFECTIVE DATE: July 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert Schutz, Testing and Certification Branch, Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Va. 26505, 304-599-7574 or FTS: 923-7331.

SUPPLEMENTARY INFORMATION: The National Institute for Occupational Safety and Health (NIOSH) was established by section 22(b) of the Occupational Safety and Health Act (29 U.S.C. 671(b)). Section 22(c) of the act authorizes NIOSH to develop and establish recommended occupational safety and health standards. As an extension to these recommendations, NIOSH developed a number of testing and certification programs designed to assure safe and reliable performance of personal protective and hazard measuring equipment. On December

30, 1977, NIOSH proposed regulations for the testing and certification of personal noise dosimeter sets (42 FR 65194), and on January 12, 1976, NIOSH proposed testing and certification regulations for industrial head protective devices (41 FR 1757). In addition, on November 5, 1976, proposed amendments for the classification and labeling of gas detector tube units were published (41 FR 48753).

Since the testing and certification programs are voluntary and manufacturers are under no legal obligation to submit their products for NIOSH testing and certification, the regulations are not legally required. Although the proposed regulations are being withdrawn, the voluntary certification programs for personal protective and measuring equipment will be continued or established by NIOSH under agency guidelines. Copies of the NIOSH guidelines for certification, as well as other information concerning the testing and certification programs, may be obtained from NIOSH at the above address.

Accordingly, the specified notices of proposed rulemaking are withdrawn.

Dated: May 19, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: July 22, 1978.

HALE CHAMPION,
Acting Secretary.

[FR Doc. 78-21073 Filed 7-28-78; 8:45 am]

[4910-59]

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety
Administration

[49 CFR Part 531]

[Docket No. LVM 77-05; Notice 2]

PASSENGER AUTOMOBILE AVERAGE FUEL ECONOMY STANDARDS

Proposed Decision to Grant Exemption

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Proposed decision to grant exemption from average fuel economy standard and to establish alternative standard.

SUMMARY: This notice is being issued in response to a petition by Excalibur Automobile Corp. (Excalibur) requesting that it be exempted from the generally applicable average fuel economy standard of 18.0 miles per gallon (mpg) for 1978 model year passenger automobiles and that a lower, alternative standard be established for it. This notice proposes that the requested exemption be granted and

that an alternative standard of 11.5 mpg be established for Excalibur.

COMMENT CLOSING DATE: August 30, 1978.

ADDRESS: Comments on this notice must refer to docket LVM 77-05 and should be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Douglas Pritchard, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590, 202-755-9384.

SUPPLEMENTARY INFORMATION: Section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act), provides that a low volume manufacturer of passenger automobiles may be exempted from the generally applicable average fuel economy standards for passenger automobiles if those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if the National Highway Traffic Safety Administration (NHTSA) establishes an alternative standard for the manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one which manufactures less than 10,000 passenger automobiles worldwide in the model year for which the exemption is sought (the affected model year) and which manufactured less than 10,000 passenger automobiles worldwide in the second model year before the affected model year. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

- (1) Technological feasibility;
- (2) Economic practicability;
- (3) The effect of other Federal motor vehicle standards on fuel economy; and
- (4) The need of the Nation to conserve energy.

To implement section 502(c), NHTSA issued Part 525, Exemptions from average fuel economy standards (42 FR 38374; July 28, 1977). Part 525 prescribes the contents of exemption petitions and sets forth the procedures for processing those petitions. After receipt of a complete petition, the agency publishes a notice of receipt which summarizes the petition and invites comments on it. Subsequently, the agency publishes a proposed decision to grant or deny the petition and provides a further opportunity for comment. Finally, the agency publishes a final decision to grant or deny the petition.

Excalibur originally filed a petition in October 1977 for exemption from the generally applicable standards for 1978-1980 model year passenger automobiles. By letter of December 14, 1977, the agency informed Excalibur that its petition was incomplete and identified the additional information needed by the agency. Excalibur submitted further information in a letter dated February 17, 1978. This letter essentially completed Excalibur's petition for exemption from the affected model years' standards.

Accordingly, NHTSA issued a notice announcing the receipt of a petition for exemption from the 1978-1980 model year standards (43 FR 19311; May 4, 1978). That notice summarized the Excalibur petition and invited public comment on it. No comments were submitted in response to this notice.

This agency has decided to issue a proposed decision on the Excalibur petition for the 1978 model year separate from the proposed decision for the 1979 and 1980 model years. This will expedite reaching a final decision on the request for exemption from the 1978 standard. No purpose would be served by delaying the publication of this proposed decision until the analysis for the 1979 and 1980 model years is complete. A separate notice will soon be published announcing NHTSA's proposed decision for those future model years.

Requested alternative standard. Excalibur's request of an alternative standard of 11.5 mpg for the 1978 model year was based on its final average fuel economy, as reported by the Environmental Protection Agency. Since Excalibur produces only one vehicle configuration, this level will be its final average fuel economy, unless Excalibur makes a running change. NHTSA has used 11.5 mpg as a base figure, and determined the maximum feasible average fuel economy proposed in this notice after considering whether there were any fuel economy improvements which are deemed feasible for the 1978 model year and could be added to that base.

Technological feasibility and economic practicability. In considering whether Excalibur could improve its average fuel economy for model year 1978, the agency examined the same methods for improving average fuel economy that it examined in establishing average fuel economy standards for model year 1981-84 passenger automobiles (42 FR 33534; June 30, 1977) and for model year 1980-81 light trucks (43 FR 11995; March 23, 1978). These methods were weight reduction, aerodynamic improvements, engine efficiency improvements, engine accessory efficiency improvements, alternative engines, turbochargers, automatic

transmission improvements, improved lubricants, reduced rolling resistance, engine displacement or drive ratio reductions, and mix shifts.

NHTSA's examination of these methods in this proceeding was significantly less detailed than in those earlier proceedings since there is almost no leadtime now for making running changes to the model year 1978 Excaliburs. There will be even less leadtime when the final decision on the exemption petition is issued.

To use most of these methods, Excalibur would have to discard components that it has already purchased (Excalibur purchases its engines and drive trains from General Motors) and produce or purchase new components. NHTSA has no information regarding Excalibur's ability to produce or purchase and incorporate the new components before the end of the 1978 model year. It seems extremely unlikely, however, that this could be accomplished. On the other hand, the value of the inventory purchased or ordered by Excalibur as of the date the petition was filed was in excess of \$800,000. It is judged not to be economically practicable for Excalibur to change the engine or drive train, and absorb the loss of inventory.

In addition to this substantial uncertainty and the very short leadtime, there is a possibility that changes to Excalibur's components to improve fuel economy in the 1978 model year could create a need to recertify the automobiles for compliance with the 1978 model year emission standards. Depending on the type and magnitude of the change, recertification could entail rerunning the 50,000 mile durability test and the 4,000 mile test. It would take at least 60 days to complete the testing if both tests were necessary. Until the Excaliburs were recertified, Excalibur would have to choose between (1) producing its automobiles with the changes and running the risk that the automobiles would not be certified and, therefore, could not be sold, (2) not producing any automobiles until certification was granted, thus potentially causing serious financial problems for Excalibur, or (3) continuing to produce Excaliburs as currently certified. The first and second course would involve a high degree of financial risk for a small company like Excalibur. Both could lead to serious disruptions of its cash flow. The third course would not involve that type of financial risk, but also would produce the least fuel economy benefit. Indeed, none of the courses would produce much of a fuel economy benefit since only a small portion of the entire Excalibur fleet would have the changes and, thus, have improved fuel economy.

Excalibur can not effect any mix shifts, because it produces only one vehicle configuration.

Based on the foregoing considerations, the NHTSA concludes that running changes and mix shifts to improve the fuel economy of Excalibur's 1978 model year passenger automobiles are not technologically feasible and economically practicable.

The effect of other Federal motor vehicle standards. The other motor vehicle standards are important for the current model year only in determining whether these standards could be complied with in a more fuel efficient manner. Any fuel economy penalty which might be imposed by these standards in the current model year would be reflected in Excalibur's fuel economy average and in the discussion of technological feasibility for the 1978 Excaliburs and thus would already have been considered.

In determining whether the Federal standards could be complied with in a more fuel efficient manner, the agency considers the leadtime available to the manufacturer to be a critical factor. In this case the leadtime is so short that the agency deems it to be extremely unlikely that a different means of complying with the emissions, safety, or damageability standards could be incorporated on 1978 Excalibur automobiles before the end of the model year.

Based on the foregoing, NHTSA tentatively concludes that no more fuel efficient means of compliance with the other Federal motor vehicle standards is available to Excalibur in the 1978 model year.

The need of the Nation to conserve energy. The daily extra U.S. demand for petroleum that will result from Excalibur achieving an average fuel economy of 11.5 mpg rather than the generally applicable level of 18.0 mpg is estimated to average 2.5 barrels per day over the life of the model year 1978 Excaliburs. To give a perspective on this number, the fuel consumed by passenger automobiles in the United States is about 5 million barrels each day. For all purposes, the United States currently consumes about 17 million barrels of petroleum each day.

Selection of the type of alternative standard. The act permits NHTSA to establish an alternative average fuel economy standard applicable to exempted manufacturers in one of three ways: (1) A separate standard may be established for each exempted manufacturer; (2) classes, based on design, size, price, or other factors, may be established for the automobiles of exempted manufacturers, with a separate average fuel economy standard applicable to each class; or (3) a single standard may be established for all exempted manufacturers.

The NHTSA believes that it is appropriate to establish a separate standard for Excalibur. The petitions of other manufacturers which have already been analyzed for the 1978 model year resulted in the proposal of separate standards for those petitioners. Some petitions of other manufacturers have not been fully analyzed. Accordingly, it would not be practicable for the agency to use the second or third approaches described in the preceding paragraph for the purposes of Excalibur's petition.

Proposed alternative standard. Based on the agency's tentative conclusions stated above, the agency believes that the maximum feasible average fuel economy for Excalibur for the 1978 model year is 11.5 mpg. Therefore, the agency proposes to exempt Excalibur from the generally applicable standard of 18.0 mpg and to establish an alternative standard of 11.5 mpg for Excalibur for the 1978 model year.

In consideration of the foregoing, it is proposed that 49 CFR Part 531 be amended by adding § 531.5(b)(5) reading as follows:

§ 531.5 Fuel economy standards.

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

- (1) * * *
- (2) * * *
- (3) * * *
- (4) [Reserved]
- (5) Excalibur Automobile Corp.

AVERAGE FUEL ECONOMY STANDARD	
Model year:	Miles per gallon
1978.....	11.4

Interested persons are invited to submit comments on this proposed decision. Comments must be limited so as not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion.

NHTSA typically allows at least 45 days for the public to comment on its proposals. With respect to this proposal, however, the agency has shortened the comment period to 30 days. There are a number of reasons for taking this action. First, it is very desirable for a final decision on the Excalibur petition for the 1978 model year to be published before the end of the model year. To do this, it will be necessary to move expeditiously on this decision. Second, the agency has already provided a 25-day period to comment on

the petition when the agency published its notice of receipt. Third, this agency's experience thus far with fuel economy exemptions indicates that there will be few, if any, comments on this proposal. This proposal is fairly simple, and should not require a great deal of analysis to prepare comments.

All comments received before the close of business on the comment closing date indicated at the beginning of this proposal will be considered, and will be available for public inspection in the docket both before and after the comment closing date. To the extent possible, comments filed after the comment closing date will also be considered. The agency will continue to file relevant material in the docket as it becomes available after the comment closing date, and it is recommended that interested persons continue to examine the docket for new material.

The agency has reviewed the impacts of this proposal and determined that they are minimal and that the proposal is not a significant regulation within the meaning of Executive Order 12044.

The program official and attorney principally responsible for the development of this proposed regulation are Douglas Pritchard and Stephen Kratzke respectively.

AUTHORITY: Sec. 9, Pub. L. 89-670, 80 Stat. 981 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 41 FR 25015, June 22, 1976, and 43 FR 8525, March 2, 1978.

Issued on July 25, 1978.

MICHAEL M. FINKELSTEIN,
Acting Associate Administrator
for Rulemaking.

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[3510-22]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric
Administration

[50 CFR Part 264]

UNITED STATES STANDARDS FOR GRADES OF
FROZEN MINCED FISH BLOCKS

AGENCY: National Oceanic and Atmospheric Administration, National Marine Fisheries Service, U.S. Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This document sets forth proposed U.S. Standards for Grades of Frozen Minced Fish Blocks. The proposal is based on new information and data submitted to the Department of Commerce following the March 13, 1975, proposal regarding proposed interim standards for frozen minced fish blocks, as well as on other information and research results available to the